

ESTTA Tracking number: **ESTTA401396**

Filing date: **04/04/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	BASF Agrochemical Products B.V.
Granted to Date of previous extension	04/03/2011
Address	Groningensingel 1 EA Arnhem, NETHERLANDS
Attorney information	James D. Weinberger Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza 6th Floor New York, NY 10017 UNITED STATES jweinberger@frosszelnick.com, jferraro@frosszelnick.com Phone:(212) 813-5900

Applicant Information

Application No	77579821	Publication date	10/05/2010
Opposition Filing Date	04/04/2011	Opposition Period Ends	04/03/2011
Applicant	Pathway Holdings, LLC 11505 East Broadway Mango, FL 33550 UNITED STATES		

Goods/Services Affected by Opposition

Class 001. All goods and services in the class are opposed, namely: Bacteria preparations containing bacteria for agricultural and horticultural use, namely, for use in the treatment and maintenance of lawns, gardens and ponds; compost; bacteria for waste water treatment; fertilizers; non-chemical bio-fertilizers; waste water treatment chemicals for industrial use; degreasing agents not for household use; soil improving agents; chemicals for potable water treatment; natural micro-organisms used in pond maintenance
Class 005. All goods and services in the class are opposed, namely: Ecologically-friendly pesticides, insecticides and fungicides for agricultural and domestic use

Applicant Information

Application No	85084073	Publication date	12/14/2010
Opposition Filing Date	04/04/2011	Opposition Period Ends	

Applicant	Pathway Holdings, LLC 11505 East Broadway Mango, FL 33550 UNITED STATES
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Goods/Services Affected by Opposition

Class 001. All goods and services in the class are opposed, namely: Bacteria preparations containing bacteria for agricultural and horticultural use, namely, for use in the treatment and maintenance of lawns, gardens and ponds; compost; bacteria for waste water treatment; fertilizers; non-chemical bio-fertilizers; waste water treatment chemicals for industrial use; degreasing agents not for household use; soil improving agents; chemicals for potable water treatment; natural micro-organisms used in pond maintenance
Class 005. All goods and services in the class are opposed, namely: Pesticides, insecticides and fungicides for agricultural and domestic use

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2910627	Application Date	07/08/2003
Registration Date	12/14/2004	Foreign Priority Date	NONE
Word Mark	BEYOND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/05/00 First Use In Commerce: 2002/05/00 Herbicides for agricultural and commercial [and domestic] use		

Attachments	F0776033.pdf (9 pages)(670549 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ James D. Weinberger
Name	James D. Weinberger
Date	04/04/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BASF AGROCHEMICAL PRODUCTS B.V.,

Opposer,

-against-

PATHWAY HOLDINGS, LLC,

Applicant.

Opposer, BASF Agrochemical Products B.V. (“Opposer”), a private limited liability company organized under the laws of the Netherlands with an address at Groningensingel 1 EA Arnhem, Netherlands, believes that it would be damaged by the registration of the trademarks BEYOND GREEN and BEYOND GREEN (and Design), both in International Classes 1 and 5 as applied for in Application Serial Nos. 77/579,821, filed September 26, 2008 and 85/084,073, filed July 14, 2010 (the “Applications”), under Section 1(b) of the Lanham Act.¹ As grounds for its opposition, Opposer, by its attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Opposer is a leading chemical company and a large supplier of agricultural and pesticide products and fine chemicals.
2. Opposer, itself or through its related companies, has been using the BEYOND mark in the United States in connection with herbicides for agricultural and commercial use since May 2002.
3. Opposer has invested a substantial amount of time, effort and money in promoting the BEYOND mark and the herbicides offered thereunder.

¹ Opposer does not herein seek to oppose registration of the Applications in International Classes 3, 11 and 40.

4. As a result of Opposer's investment of time, money and effort, the BEYOND mark has come to be recognized as identifying goods finding their origin exclusively in or otherwise associated with Opposer, and represents a substantial goodwill of Opposer.

5. Opposer owns U.S. Registration No. 2,910,627, registered on December 14, 2004 for BEYOND for "herbicides for agricultural and commercial use" in International Class 5 based on the aforementioned first use date of May 2002. This registration is valid, subsisting and in full effect and serves as *prima facie* evidence of the validity of the mark and of Opposer's exclusive right to use BEYOND in connection with the goods identified therein, pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(a). This registration has also become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065. Attached hereto as Exhibit A is a printout from the TARR electronic database records of the U.S. Patent and Trademark Office showing the current status and title of the registration relied upon herein.

6. Upon information and belief, Applicant is a Florida limited liability company with an address at 11505 East Broadway Mango, Florida 33550.

7. On or about September 26, 2008, Applicant filed an application to register the mark BEYOND GREEN for, *inter alia*, the following goods and services:

- "Bacteria preparations containing bacteria for agricultural and horticultural use, namely, for use in the treatment and maintenance of lawns, gardens and ponds; compost; bacteria for waste water treatment; fertilizers; non-chemical bio-fertilizers; waste water treatment chemicals for industrial use; degreasing agents not for household use; soil improving agents; chemicals for potable water treatment; natural micro-organisms used in pond maintenance" in International Class 1; and
- "Ecologically-friendly pesticides, insecticides and fungicides for agricultural and domestic use" in International Class 5;

(collectively, the "Beyond Green Goods") based on an intent to use under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b). The application filing date is more than six (6) years

subsequent to Opposer's first use of BEYOND for herbicides in the United States and nearly four (4) years subsequent to the registration date thereof.

8. On or about July 14, 2010, Applicant filed a second application to register the mark BEYOND GREEN in the following form:



for, *inter alia*, the BEYOND GREEN Goods, based on an intent to use under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b). The application filing date is more than eight (8) years subsequent to Opposer's first use of BEYOND for herbicides in the United States and nearly six (6) years subsequent to the registration date thereof.

9. Applicant's BEYOND GREEN marks are highly similar to Opposer's BEYOND mark in appearance and sound, adding only the descriptive term GREEN, which is commonly understood by consumers to refer to environmentally sound goods and services, as evidenced by Applicant's disclaimer thereof in the Applications.

10. The BEYOND GREEN Goods are identical to the goods in connection with which Opposer uses and has registered its BEYOND mark.

11. On information and belief, Applicant targets the same type of consumers that purchase Opposer's BEYOND herbicide products or to whom Opposer markets and promotes such products.

12. Based on the similarities of the parties' respective marks and goods, the public is likely to falsely associate the goods of Applicant under the BEYOND GREEN mark with

Opposer or with Opposer's goods; or to falsely believe that Applicant's BEYOND GREEN Goods emanate from or are sponsored, endorsed or licensed by Opposer; or to falsely believe that there is some relationship between Applicant and Opposer.

13. Applicant's Applications and the presumption of exclusivity that would arise from registration to Applicant of the BEYOND GREEN marks are inconsistent with the prior rights of Opposer in the BEYOND mark and the rights of Opposer flowing from its own federal trademark registration.


14. Use and registration of the BEYOND GREEN mark by Applicant in connection with the BEYOND GREEN Goods is likely to cause confusion, cause mistake or deceive consumers, and cause them to believe that the goods offered under Applicant's BEYOND GREEN marks emanate from, or are sponsored by, endorsed by or otherwise connected with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

15. Opposer will be damaged by the registration of Applicant's BEYOND GREEN marks by reason of the foregoing, and because it would give color of right therein to Applicant inconsistent with Opposer's prior rights.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registrations sought by Application Serial Nos. 77/579,821 and 85/084,073 be denied.

Dated: New York, New York
April 4, 2011

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
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Attorneys for Opposer

EXHIBIT A

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2011-04-04 09:05:44 ET

Serial Number: 78271733 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2910627

Mark (words only): BEYOND

Standard Character claim: No

Current Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Date of Status: 2010-12-14

Filing Date: 2003-07-08

Transformed into a National Application: No

Registration Date: 2004-12-14

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: L30 -TMEG Law Office 103

Date In Location: 2010-12-14

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. BASF Agrochemical Products B.V.

Address:

BASF Agrochemical Products B.V.
Groningensingel 1
EA Arnhem
Netherlands

Legal Entity Type: Limited Liability Company

State or Country Where Organized: Netherlands

GOODS AND/OR SERVICES

International Class: [005](#)

Class Status: [Active](#)

[Herbicides for agricultural and commercial use](#)

Basis: [1\(a\)](#)

First Use Date: [2002-05-00](#)

First Use in Commerce Date: [2002-05-00](#)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "[Trademark Document Retrieval](#)" shown near the top of this page.

[2010-12-14 - Section 8 \(6-year\) accepted & Section 15 acknowledged](#)

[2010-12-08 - Case Assigned To Post Registration Paralegal](#)

[2010-11-19 - TEAS Section 8 & 15 Received](#)

[2005-10-28 - Attorney Revoked And/Or Appointed](#)

[2005-10-28 - TEAS Revoke/Appoint Attorney Received](#)

[2004-12-14 - Registered - Principal Register](#)

[2004-09-21 - Published for opposition](#)

[2004-09-01 - Notice of publication](#)

[2004-07-30 - TEAS Change Of Correspondence Received](#)

[2004-07-13 - Approved for Pub - Principal Register \(Initial exam\)](#)

[2004-06-29 - Amendment From Applicant Entered](#)

[2004-06-29 - Communication received from applicant](#)

2004-06-29 - PAPER RECEIVED

2004-02-03 - TEAS Change Of Correspondence Received

2004-01-13 - Non-final action mailed

2004-01-08 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

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Correspondent

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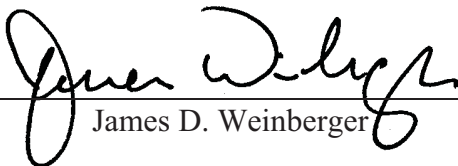
CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Notice of Opposition to be sent by prepaid first-class mail to Applicant and its correspondent of record as follows:

Pathway Holdings, LLC
11505 East Broadway
Mango, FL 33550

John W. McGlynn, Esq.
Rex A. Donnelly, Esq.
RatnerPrestia
PO Box 1596
Wilmington, Delaware 19899-1596

on this 4th day of April, 2011.


James D. Weinberger